

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY TYRONE CAMPBELL,

No. C 07-00982 SBA (PR)

Petitioner,

**ORDER GRANTING MOTION TO
DISMISS PETITION AS SUCCESSIVE
AND TERMINATING REMAINING
PENDING MOTIONS**

v.

DAVID RUNNELS, Warden,

(Docket nos. 9, 13, 15)

Respondent.

Petitioner Anthony Tyrone Campbell filed this pro se habeas corpus action pursuant to 28 U.S.C. § 2254 on January 25, 2007. The petition alleges that his Sixth Amendment rights were violated based upon newly discovered evidence of an alleged conflict of interest on the part of his trial counsel.

On September 12, 2007, Respondent Warden David Runnels filed a motion to dismiss (docket no. 9) alleging that Petitioner's petition was barred by procedural default and was untimely under 28 U.S.C. § 2244(d) -- the statute of limitations set by the Antiterrorism and Effective Death Penalty Act of 1996. Petitioner filed an opposition. In an Order dated July 2, 2008, the Court granted Petitioner leave to file a supplemental opposition to Respondent's motion to dismiss.

On July 24, 2008, Petitioner filed a motion for leave to conduct discovery (docket no. 13).

On August 8, 2008, Petitioner filed his supplemental opposition to Respondent's motion to dismiss.

On August 13, 2008, Respondent filed another motion to dismiss (docket no. 15). Respondent now alleges that the instant petition should be dismissed as a second or successive petition. Petitioner opposes the motion.

The record shows that Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 00-1135 SBA (PR). The Court denied the first petition on the merits.

DISCUSSION

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly, Respondent's motion to dismiss the petition as a second or successive petition (docket no. 15) is GRANTED. The instant petition is DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary order.

CONCLUSION


For the foregoing reasons, Respondent's motion to dismiss the petition as a second or successive petition (docket no. 15) is GRANTED, and the petition is DISMISSED pursuant to 28 U.S.C. § 2244(b). The Court has rendered its final decision on this matter; therefore, this Order TERMINATES Petitioner's case.

The Clerk of the Court shall terminate as moot all other pending motions, including Respondent's prior motion to dismiss on grounds of untimeliness and non-exhaustion (docket no. 9) and Petitioner's discovery motion (docket no. 13), and close the file.

This Order terminates Docket nos. 9, 13 and 15.

IT IS SO ORDERED.

DATED: 9/11/08


SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY TYRONE CAMPBELL,
Plaintiff,

v.

DAVID RUNNELS et al,
Defendant.

Case Number: CV07-00982 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 12, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony Tyrone Campbell K56852
High Desert State Prison
P.O. Box 3030 (B-B4-214)
Susanville, CA 96127

Dated: September 12, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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